IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.10.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

TAX CASE NO.343 OF 2004

Commissioner of Income Tax-I
Coimbatore. ... Appellant/Respondent

Vs.

M/s. Sivananda Steels Ltd.,
Coimbatore - 641 002. ... Respondent/Appellant

Tax Case Appeal filed against the order of the Income Tax Appellate Tribunal, Chennai `A' Bench, dated 13.11.2003 in ITA.No.32 (Mds)/1997 Assessment year 1993-94 as against the order of the Commissioner of Income Tax (Appeals) Coimbatore in I.T.Appeal NO.350-C/96-97, dated 27.11.1996 in P.A.No.CZ/1525/SR-II/CBC for the assessment year 1993-94 and as against the order of the Deputy Commissioner of Income Tax, Special Range-II, Coimbatore in PAN/GIR.No.CZ/1525 dated of order 27.03.1996 for the assessment year 1993-94.

For Appellant : Mr. T. Ravikumar
For Respondent : Mr. Venkatanarayanan
for M/s. SubbarayaAiyar

J U D G M E N T

(Judgment of the Court was delivered by
K. Raviraja Pandian, J.

The appeal is filed against the order of the Income Tax Appellate Tribunal made in ITA.No.32(Mds)/12997, dated 13.11.2003. The relevant assessment year under consideration is 1993-1994. While completing the assessment of the assessee company for the assessment year 1993-1994, the Assessing Officer adjusted the loss in business of Rs.1,04,92,557/- against the export incentives of Rs.1,34,50,556/- and computed the eligible profit for deduction under Section 80HHC at Rs.29,57,999/-. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and contended that there were no profits of business; the negative figure of profit from business should have been ignored by the Assessing Officer

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and deduction under Section 80HHC should have been allowed on 90% of the export incentives. However, the Commissioner of Income Tax (Appeals) dismissed the appeal. As against that order of Commissioner of Income Tax (Appeals), the Assessing Officer filed an appeal before the Income Tax Appellate Tribunal which by reason of the impugned order held that the negative amount of profit should be disregarded and the profit from business should be taken as "Nil" and thereafter 90% of the export incentives be allowed in the ratio of export turn over to total turnover as deduction under Section 80HHC and directed the Assessing Officer to recompute the deduction accordingly. The correctness of the order passed by the Tribunal is canvassed by the Revenue by filing this appeal and formulating the following the substantial question of law to the effect that " Whether on the facts and in the circumstances of the case, Income Tax Appellate Tribunal was right in ignoring the negative figure of profit of the export business and in directing to allow the deduction under Section 80HHC with reference to 90% of the export incentives?", for consideration.

2. The learned counsel appearing for the Revenue submitted that similar issue came to be considered by the Supreme Court in IPCA LABORATORY LTD VS. DEPUTY COMMISSIONER OF INCOME TAX reported in 266 ITR 521 and held **in favour of** the Revenue. The said judgment covers the issue involved in this case.

3. We heard the counsel and perused the records. The Apex Court judgment in 266 ITR 521 (IPCA LABORATORY LTD VS. DEPUTY COMMISSIONER OF INCOME TAX) reads as follows:-

> 4. In 266 ITR 521, the Apex Court after referring to the provision of Section 80 HHC of the Act held that undoubtedly Section 80 HHC had been incorporated in the Income Tax Act, 1961, with a view to providing incentive for earning foreign exchange. Even though a liberal interpretation had to be given to such a provision the interpretation had to be as per the wording of the section. If the wording of the section was clear, then benefits, which were not available could not be conferred by ignoring or misinterpreting words in the section.
>
> 5. The Supreme Court further observed that a plain reading of Section 80 HHC made it clear that in arriving at profits earned from export of both self manufactured and trading goods the profits and losses in both trade have to be taken into consideration. If after such adjustments, there was a profit the assessee would be entitled to deduction under section 80 HHC(1). If there was a loss, the assessee would not be entitled to deduction. It further held that the word "profit" in sub-Section(1) and (3)(a) and (b) of Section 80 HHC means a positive profit. In other words if there was loss then no deduction would be available

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under sub-section (1) of sub-section (3)(a) or sub-section (3)(b). In arriving at the figure of positive profit, both the profits and the losses would have to considered. If the net figure was a positive profit then the assessee would be entitled to deduction if the net figure was a loss then the assessee would not be entitled to deduction. The Court further held that the plain reading of sub-section (3)(c) showed that "profits from such export business" had to be profits of exports of self-manufactured goods plus profits of exports of trading goods. The opening words "profit derived from such exports" together with the word "and " indicate that the profits had to be calculated by counting both the exports. Deduction could be permitted under section 80HHC(1) only if there was a positive profit in the exports of both self-manufactured goods as well as trading goods. If there was a loss in either of the two then the loss had to be taken into account for the purposes of computing the profits."

4. Having regard to the above submission made by the counsel for the Revenue and the issue is squarely covered by the judgment of the Supreme Court in 266 ITR 521, which has been followed by this Court in T.C.No. **302 of 2004** on 1.10.2007, the tax case appeal is **allowed**. No costs.

Sd/- Asst.Registrar,
Dt/-5.11.2007.

Corrected as per order of this Court dt. 10.12.2007 made in TC[A].343/04.
Sd/-Asst. Registrar,
Dt/-13.12.2007l

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
Income-Tax Appellate Tribunal
Bench 'C', Rajaji Bhavan,
III Floor,
Besant Nagar, Chennai - 90.
2. The Commissioner of
Income Tax (Appeals)
Coimbatore.
3. The Deputy Commissioner of
Income Tax,
Special Range II, Coimbatore.
4. The Income Tax Officer,
Company Circle II(i),
Besant Nagar, Chennai - 90.
5. The Assistant Registrar,
Income-Tax Appellate Tribunal
Bench 'A' Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.
+ 1 cc To Mr.N.Muralikumaran,
Advocate, SR.61779.

Corrected order to be despatched for the order already despatched on 15.11.207.

T.C.No.343 of 2004

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RVL 06.11.2007
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